IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5702 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI NATHUBHAI MALEK

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Appearance:

MR PH PATHAK for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 20/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, direction of order directing Gujarat Industrial Development Corporation (`Corporation' for short) to regularise his services from the date he was

initially appointed and to grant him all benefits available to regular employees.

The case of the petitioner was that he joined service of the Corporation as a Plumber in the year 1973. Initially, he was appointed as a Daily Wager and was paid on daily wage basis. He was continued as a daily wager for about ten years. In 1983, he was appointed on Work Charge Establishment and an order was passed on 13th January, 1973 (Annexure `A') in which it was stated that the petitioner who was working as Daily Wager Plumber was appointed as Work Charge Plumber in the pay scale of Rs. 260-350 plus usual allowances in a stop gap vacancy at Gandhidham Sub-Division for the period from 13th January, 1983 to 31st January, 1983 . It is not in dispute that thereafter, his services were continued. Several orders were passed in favour of the petitioner details of which re placed on record at Annexure `B'. According to the petitioner, as per the policy of the corporation, all employees working in the Corporation who had completed ten years of service were considered for regularisation and were regularised. The petitioner had completed ten years in 1983 and hence, his case ought to have been considered for regularisation and he ought to have been regularised in 1983. That, however, was not done. Other persons who were similar to that of the petitioner were considered for regularisation after they had completed ten years and were regularised. When the petitioner came to know about that fact, he made an application on September 15, 1987 , (Annexure `D' to the petition), inter alia stating therein that he was in service of the Corporation continuously since more than twelve years and hence, his case was required to be considered for regularisation. He also drew attention of the Corporation that recommendations to that effect were also made. Attention of the Corporation was also drawn to the fact that other persons junior to the petitioner were already regularised by the Corporation , ignoring the legal and legitimate claim of the petitioner. He,therefore, prayed to the Corporation to regularise him in service. Nothing, however, was done in the matter. Petitioner had also stated in the petition that by a communication, dated October 13, 1987 (Annexure `E'), the Regional Manager (Establishment) of the head office of the Corporation informed all Executive Engineers of the Divisions to inform the Sub-Divisions so as to enable them to inform in turn to all Class III and IV employees who were on Work Charge Establishment to remain present before the Selection Committee for making them permanent

in service. The case of the petitioner was that at the relevant time, he was working at Gandhidham Sub-Division and he was neither informed nor called by the department for interview. A specific statement to that effect was made in the petition which was not controverted,though a detailed affidavit in reply was filed by the Deputy Executive Engineer , Gandhidham.

At the time of hearing of the petition, my attention was also invited to a resolution dated October 17, 1988 which was issued in pursuance of the recommendations made by the then Minister Shri Daultbhai Parmar relating to regularisation. It was,therefore, submitted that on that ground, the petition deserves to be allowed by issuing appropriate direction to consider the case of the petitioner in accordance with law.

In affidavit in reply, it was submitted that period between 1973 and 1983 cannot be considered for regularising the services of the petitioner inasmuch as during that period, the petitioner was not working on Work Charge Establishment but was working merely as a Daily Wager. Reliance placed by the petitioner on the cases of other employees viz. S/ Shri J. R. Das, M.B.Patel, V. H. Makwana, M.A. Patel , R.R.Patel and J.G. Jadeja is not relevant since all of them were appointed, though after the petitioner, but on Work Charge Establishment from the beginning and hence, their cases were required to be considered for regularisation. The petitioner might have been appointed prior to them but since he was not on Work Charge Establishment but only as a Daily Wager, his case was distinguishable and his case was,therefore, different. Non-consideration of the case of the petitioner, in these circumstances, cannot be said to be violative of Articles 14, 16 and 19 of the Constitution.

Regarding prayer of the petitioner in his application,dated September 15, 1987, the deponent has stated in his affidavit that a circular was issued to all the Divisions on October 13, 1987 asking all Class III and IV employees of Work Charge Establishment to remain present so that their cases for regularisation could be considered. For the reasons best known to the petitioner, he did not remain present. In these circumstances, his case could not be considered and he cannot find fault with the Corporation for non-consideration of his case .

The fact, however, remains that the petitioner was not in Ahmedabad or at any other places where the circular was

sent but was at Gandhidham and a specific statement was made in the petition that he was not informed about the circular and that such a test will be held on November 4, 1987 and in these circumstances, he could not remain present before the Selection Committee. Moreover, the provisions and instructions issued by the Government of Gujarat vide resolution dated October 17, 1988 which have been made applicable to all Corporations including the respondent Corporation, have also to be kept in mind and considered by the Corporation. That has also not been done . In these circumstances, in my opinion, the petition deserves to be allowed.

For the foregoing reasons, the petition is partly allowed. It is directed that the case of the petitioner will be considered by the Corporation keeping in mind the resolution issued by the State of Gujarat, on October 17, 1988 treating him in service from initial appointment in 1973. Since the petition pertains to regularisation and the petitioner was appointed before about three decades, it is directed that the case of the petitioner will be considered by the Corporation and final decision will be taken as early as possible, preferably within three months from the receipt of the writ. The petitioner's case will be considered in accordance with the above resolution as also the policy of the Corporation and if found fit, appropriate order will be passed in favour of the petitioner by granting all consequential benefits. Petition is accordingly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

--

parekh